

## Xidis, Claire

**From:** Xidis, Claire  
**Sent:** Friday, February 13, 2009 5:02 PM  
**To:** 'Ehrich, Delmar R.'  
**Cc:** lbullock@bullock-blakemore.com; driggs@riggsabney.com; rgarren@riggsabney.com; dpage@riggsabney.com; Jorgensen, Jay T.; George, Robert; Scott McDaniel; Robert Sanders; John Elrod; James Graves; Theresa Noble Hill; Rockwood, Linda L.; Collins, Melissa C.; Moll, Ingrid; Baker, Fred; Mark\_Quayle@cargill.com; Jones, Bruce; Jaromin, Michelle; Kelly\_Burch@oag.state.ok.us  
**Subject:** RE: Stratus Damages Reports/Missing Considered Materials

Delmar -

Your below email simply repeats your prior blanket request that the State answer your questions for 70 different subcategories of information, which is unreasonable. If after a reasonable effort, Defendants cannot locate a specific, particular item they have reason to believe should be in the production, the State is happy to answer specific questions. Some of this information responsive your blanket inquiries has been produced, some does not exist, some items may be with the entities Defendants have subpoenaed, but the authors of the report never considered those items and thus they were not in their files that were produced.

For example, for the recreation study, no records exist about the number of times a respondent was contacted. For this study, paper forms were filled out during the interviews that contain the date of the interview (another category of information you have requested). All of those paper forms were scanned, have been produced to Defendants, and are in the "Hard Copy documents from Stratus" folder in the materials. However, based on your questions, it appears Defendants have not even looked at these yet. The State is not going to perform searches for all 70 of your categories because it is overly burdensome and because it appears that Defendants have not even attempted a complete review of the materials. Defendants need to make a reasonable effort to review the materials and identify real questions rather than making burdensome blanket inquiries.

As my previous correspondence has demonstrated, the State is absolutely willing to help if Defendants have reasonable questions about the materials.

The State does not agree to an extension of Defendants' expert deadline for damages reports.

I will assume that in light of the course of action you set forth below that Defendants do not intend to accept the deposition dates of the Stratus authors I offered last week. Unless I hear otherwise from you before Monday, those dates will need to be reset to accommodate the changing schedules of the State's witnesses and attorneys.

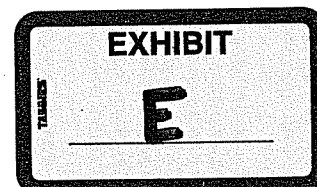
Your latest request, asking the State to separately identify each piece of the report each author wrote and the corresponding materials is also unreasonable. Defendants' report by Rausser and Dicks and the Rausser/Dicks PI declaration, the Myoda/Samadapour PI declaration and the recently served Chadwick/Merritt/Cummings report are all jointly written disclosures that were presented in the same manner as the Stratus reports. In addition, the State's report by Drs. Cooke and Welch was a joint expert report by two testifying experts. Defendants did not make such a demand in regard to their joint report prior to taking their depositions.

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**From:** Ehrich, Delmar R. [mailto:DEhrich@faegre.com]  
**Sent:** Thursday, February 12, 2009 5:30 PM

2/23/2009



**To:** Xidis, Claire

**Cc:** lbullock@bullock-blakemore.com; driggs@riggsabney.com; rgarren@riggsabney.com; dpage@riggsabney.com; Jorgensen, Jay T.; George, Robert; Scott McDaniel; Robert Sanders; John Elrod; James Graves; Theresa Noble Hill; Rockwood, Linda L.; Collins, Melissa C.; Moll, Ingrid; Baker, Fred; Mark\_Quayle@cargill.com; Jones, Bruce; Jaromin, Michelle; Kelly\_Burch@oag.state.ok.us

**Subject:** RE: Stratus Damages Reports/Missing Considered Materials

Ms. Xidis--

Contrary to your suggestion, the information in the five categories of information set out below as to each of the seven phases of plaintiff's experts damage evaluation appears not to have been produced by the plaintiff in the considered materials. By your response, are you representing that the considered materials include --for each phase and for each potential respondent or respondent --the information in these five categories? Or are you representing that the polling companies such as Westat have this information, but that plaintiff has chosen not to produce it because plaintiff contends its experts never saw it? If it is the former, we ask that you provide file identification information. If it is the latter, then such materials should be produced because, among other reasons, plaintiff cannot separate information critical to determining the integrity and lack of bias of the various phases of the survey by the expedient of hiring a subcontractor to generate and hold the information.

Plaintiff's assertion that defendants are not entitled to the identity of the respondents to these phases of plaintiff's expert work is simply untenable, in light of the active participation of some of the authors of the CV in contacting non-respondents--in some cases repeatedly and with offers of money.

In any case, as to the identity of the respondents to any of the phases of this work and these other missing considered materials, defendants believe they have met their obligation to meet and confer with plaintiff on this issue.

Please be advised that defendants intend to bring a motion to compel discovery of the missing considered materials. The defendants also will seek an extension of the March 2 damages expert disclosure deadline until June 2 because of 1) the delay occasioned by plaintiff's refusal to provide the missing considered materials and 2) the initial two month period between plaintiff's disclosure on January 5 and the current March 2 deadline is insufficient to allow defendants' experts to address fully the plaintiff's damages reports. The defendants will, of course, present their damages experts for deposition promptly thereafter. As to the latter, I note that plaintiff has spent nearly three years working on various phases of the damage reports. I add that plaintiff failed to produce the data generated by these various phases, notwithstanding the January, 2007, order regarding data production.

I plaintiff will agree to the extension from March 2 to June 2, we will prepare an unopposed motion for the extension. Please advise me promptly whether plaintiff will so agree.

Del Ehrich

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**From:** Xidis, Claire [mailto:cxidis@motleyrice.com]

**Sent:** Thursday, February 12, 2009 14:07

**To:** Ehrich, Delmar R.

**Cc:** lbullock@bullock-blakemore.com; driggs@riggsabney.com; rgarren@riggsabney.com; dpage@riggsabney.com; Jorgensen, Jay T.; George, Robert; Scott McDaniel; Robert Sanders; John Elrod; James Graves; Theresa Noble Hill; Rockwood, Linda L.; Collins, Melissa C.; Moll, Ingrid; Baker, Fred; Mark\_Quayle@cargill.com; Jones, Bruce; Jaromin, Michelle; Kelly\_Burch@oag.state.ok.us

**Subject:** RE: Stratus Damages Reports/Missing Considered Materials

Delmar -

Defendants' demand for five categories of information for every respondent *and* potential respondent for the: 1) recreational study, 2) the telephone survey, 3) focus groups, 4) pre-tests, 5) one-on-one interviews, 6) pilot tests,

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and 7) the final survey is overly burdensome on the State. This blanket request asks the State to respond to 70 separate inquiries about the materials (5 requests x 2 groups (respondent/ potential respondent) x 7 different types of events = 70).

If the Defendants want to organize the materials produced by the State into these 70 subcategories of their choosing, they are free to do so, but the State certainly has no duty to perform this exercise on behalf of the Defendants. If you want to pose specific questions about particular materials, we are happy to review those specific questions and do our best to tell you where they are located in the production if, after reasonable effort, you are unable to locate them yourself, or to let you know if the information you are seeking does not exist if that is the case. However, Defendants' blanket request for 70 different categories of information is burdensome. The materials were produced as closely as possible to the file structures in which they were maintained, and any material that the Stratus authors had in their files that is responsive to your 70 requests has been produced to Defendants.

In regard to the spreadsheet of 189 names of NON respondents to the survey that was provided to some authors of the report by Westat (which you refer to as "the attachment to Bishop CORR0000125"), this document was provided to Defendants because it was in the materials maintained by the authors of the report for this project. *To reiterate, everything the authors had in their files for this project has to the best of our knowledge been provided to Defendants.* It is my understanding that apx. 15 of the nonrespondents on this list later became respondents. Defendants will have the opportunity to ask the authors of the report further questions about this issue at their depositions if they so desire.

In regard to your request for transcripts, videotapes, and audiotapes, this is a repeated request from your Jan. 21, 2009 email. As I stated in my response to you on Jan. 23, 2009, to our knowledge no such materials were created. If this answer is still not clear, or there is something that leads you to believe otherwise despite my response, please provide additional explanation and detail about what you are requesting.

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**From:** Ehrich, Delmar R. [<mailto:DEhrich@faegre.com>]

**Sent:** Tuesday, February 10, 2009 3:38 PM

**To:** Xidis, Claire

**Cc:** [lbullock@bullock-blakemore.com](mailto:lbullock@bullock-blakemore.com); [driggs@riggsabney.com](mailto:driggs@riggsabney.com); [rgarren@riggsabney.com](mailto:rgarren@riggsabney.com); [dpage@riggsabney.com](mailto:dpage@riggsabney.com); Jorgensen, Jay T.; George, Robert; Scott McDaniel; Robert Sanders; John Elrod; James Graves; Theresa Noble Hill; Rockwood, Linda L.; Collins, Melissa C.; Moll, Ingrid; Baker, Fred; [Mark\\_Quayle@cargill.com](mailto:Mark_Quayle@cargill.com); Jones, Bruce; Jaromin, Michelle

**Subject:** RE: Stratus Damages Reports/Missing Considered Materials

Dear Ms. Xidis,

Thank you for your responses. I write again on behalf of the defendants in this action to demand that the plaintiff immediately produce the following materials reflecting or relating to:

- The number of times that each respondent or potential respondent was contacted (see, e.g., the "# of Contacts" column in the attachment to Plaintiff's file named "BishopCORR0000125," a spreadsheet of 189 names for the conversion refusal calls that four of Plaintiff's testifying experts received. The spreadsheet has name, address, phone, and other information);
- The comments made by each respondent or potential respondent when refusing to participate in any damages study conducted by Plaintiff (see, e.g., the "EROC Comment" column in the attachment to BishopCORR0000125);
- The date that each respondent or potential respondent was last contacted (see, e.g., the "Last Contact" column in the attachment to BishopCORR0000125);
- The name of the interviewer for each respondent or potential respondent (see, e.g., the "Interviewer" column

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in the attachment to BishopCORR0000125);

- The "record of actions" identified in the damages report entitled Natural Resource Damages Associated with Aesthetic and Ecosystem Injuries to Oklahoma's Illinois River System and Tenkiller Lake (see, e.g., Section 4.9.3, pg. 4-38).

I have used the terms "Respondent" and "potential respondent" to mean any individual contacted during plaintiff's damage studies to obtain information related to recreational use in the Illinois River Watershed or to alleged natural resource damages. To be clear, I have used the term "damages studies" to include, Plaintiff's 2006 recreational use intercept study, Plaintiff's 2006 telephone survey, and any aspect of the contingent valuation study (e.g., pre-tests, focus groups, one-on-one interviews, pilot tests, final survey). From our review of the considered materials that have been previously produced by Plaintiff as to the CV reports, the Plaintiff's decision to employ a contingent valuation method was influenced by the results of the intercept study and the telephone survey. Defendants are entitled to the identity of those responding to the intercept study and the telephone survey in order to assess what plaintiff clearly viewed as unsatisfactory answers. Moreover, it appears that at least some of the authors of the CV study were provided the contact information of respondents to the CV survey and, indeed, made phone calls to those who had refused to submit to the survey. In short, the plaintiff's contention that the identity of the survey respondents was not "considered" by the plaintiff's experts is simply false.

Finally, all transcripts, videotapes, and audiotapes related to the interview of or correspondence with any respondent or potential respondent for any of the damages studies must be produced.

All of the information identified above should have been provided along with the Stratus report on January 5. Plaintiff's failure to provide this information immediately will further prejudice the defendants in preparing rebuttal damage experts within the deadlines provided in the current case management order. As Defendants continue to evaluate the provided materials, we may have further production demands.

I would appreciate hearing from you at your earliest opportunity.

Del Ehrich

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**From:** Xidis, Claire [mailto:cxidis@motleyrice.com]

**Sent:** Tuesday, February 03, 2009 15:36

**To:** Ehrich, Delmar R.

**Cc:** lbullock@bullock-blakemore.com; driggs@riggsabney.com; rgarren@riggsabney.com; dpage@riggsabney.com; Jorgensen, Jay T.; George, Robert; Scott McDaniel; Robert Sanders; John Elrod; James Graves; Theresa Noble Hill; Rockwood, Linda L.; Collins, Melissa C.; Moll, Ingrid; Baker, Fred; Mark\_Quayle@cargill.com; Jones, Bruce; Jaromin, Michelle

**Subject:** RE: Stratus Damages Reports/Missing Considered Materials

Delmar -

Attached hereto is a new copy of the document you requested below in your 4th bullet point. Please let me know if you have any trouble opening this document.

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**From:** Xidis, Claire

**Sent:** Thursday, January 29, 2009 1:44 PM

**To:** Ehrich, Delmar R.

**Cc:** lbullock@bullock-blakemore.com; driggs@riggsabney.com; rgarren@riggsabney.com; dpage@riggsabney.com; Jorgensen, Jay T.; George, Robert; Scott McDaniel; Robert Sanders; John Elrod; James Graves; Theresa Noble Hill;

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Rockwood, Linda L.; Collins, Melissa C.; Moll, Ingrid; Baker, Fred; Mark\_Quayle@cargill.com; Jones, Bruce; Jaromin, Michelle

**Subject:** RE: Stratus Damages Reports/Missing Considered Materials

Delmar - Below is a response to each of your Jan. 27, 2008 requests.

Bullet point 1 - Your request for a "listing of all sample housing units" is simply a repeated request for the same information requested in your email dated Jan. 21, 2009 regarding information identifying the survey participants, and the same response applies here. I met and conferred with Robert George regarding this yesterday, and unfortunately we were not able to reach an agreement on this issue. He has informed me that you all intend to file a motion about this.

Bullet point 2 - "[T]he dataset used for the statistical analyses presented in the report" was produced to Defendants on Jan. 5, 2009. It was produced on a disc that was hand delivered to Leslie Southerland that day, rather than on the hard drive that was shipped to her and also delivered that day. It is on the disc in the zip file "Additional Materials for Stratus Shared Database" and the file name within that zip file is "Wdata12192008.dta"

Bullet point 3 - The "do files" were produced to Defendants on Jan. 5, 2009. These are also located on the disc in the same zip file "Additional Materials for Stratus Shared Database" described above. There are three "do files" in this zip file, each of which ends with ".do" - specifically, they are named:

Chapter6Tables.do.do  
DataChecking.do.do  
Final\_logit\_and\_more.do.do

Bullet point 4 - We cannot get our copy of this document to open, and Stratus is unable to open their copy as well. This is not a document created by Stratus but a document they pulled off the web when doing research, and they are trying to locate another copy of it and when they do I will send it to you.

Bullet point 5 - Fully accessible, duplicative versions of password protected files were simultaneously produced to defendants on January 5, in addition to these password protected copies.

Nevertheless, if you want to check this for yourself, the passwords which will unlock the password-protected copies of the files are as follows:

OKWaterTextResponse9.zip	OKWS#9ms
OKWaterPilot2Deliverable1.zip	OKWS\$P2
OKWaterMSDeliverable1.zip	OKWS#1ms
OKWaterMSDeliverable10.zip	OKWS#10ms
OKWaterDeliverablePF.zip	OKWS#pf
OKWaterDeliverable.zip	OKWS#Fms
OKWaterFinal2Deliverable.zip	OKWS#Fms
OKWaterMSDeliverable2.zip	OKWS#2ms
OKWaterMSDeliverable3.zip	OKWS#3ms
OKWaterMSDeliverable4.zip	OKWS#4ms
OKWaterMSDeliverable5.zip	OKWS#5ms
OKWaterMSDeliverable6.zip	OKWS#6ms
OKWaterMSDeliverable7.zip	OKWS#7ms
OKWaterMSDeliverable8.zip	OKWS#8ms
OKWaterMSDeliverable9.zip	OKWS#9ms
OKWaterPilot1Deliverable1.zip	OK#9713
OKWaterPilot1Deliverable2.zip	OK#9713
OKWaterPilot1Deliverable3.zip	OK#9713
Pilot1Deliverable3Mod1.zip	OK#9713
OKWaterPilot2Deliverable2.zip	OKWS\$P2

Please let me know if you have any additional questions.

2/23/2009

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**From:** Ehrich, Delmar R. [mailto:DEhrich@faegre.com]

**Sent:** Tue 1/27/2009 5:23 PM

**To:** Xidis, Claire

**Cc:** lbullock@bullock-blakemore.com; driggs@riggsabney.com; rgarren@riggsabney.com; dpage@riggsabney.com; Jorgensen, Jay T.; George, Robert; Scott McDaniel; Robert Sanders; John Elrod; James Graves; Theresa Noble Hill; Rockwood, Linda L.; Collins, Melissa C.; Moll, Ingrid; Baker, Fred; Mark\_Quayle@cargill.com; Jones, Bruce

**Subject:** RE: Stratus Damages Reports/Missing Considered Materials

Dear Ms. Xidis,

I write on behalf of the defendants in this action to demand that the plaintiff immediately produce the following materials in addition to those that I identified in my January 21 email:

- listing of all sample housing units;
- dataset used for the statistical analyses presented in the report (i.e., the analysis dataset);
- the "do file" that corresponds to every table and every model in the report;
- an uncorrupted version of the file stratus0027722\_finaloutdoorrecreationreportec.pdf; and
- passwords for the password protected Westat files.

This information should have been provided along with the Stratus report on January 5. The plaintiff's failure to provide this information immediately will further prejudice the defendants in preparing rebuttal damage experts within the deadlines provided in the current case management order. As Defendants continue to evaluate the provided materials, we may have further production demands.

As to your January 23 mail refusing to produce information related to the identity of survey respondents, Robert George has articulated the position of the defendants as to why that refusal is unwarranted.

I would appreciate hearing from you at your earliest opportunity.

Del Ehrich

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Confidential & Privileged

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2/23/2009